

**BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA**

In the Matter of:

CLAIMANT

vs.

REGIONAL CENTER OF THE EAST BAY, Service Agency.

OAH No. 2021010530

DECISION

Administrative Law Judge Holly M. Baldwin, State of California, Office of Administrative Hearings, heard this matter on February 26, 2021, by videoconference.

Claimant represented herself at hearing.

Mary Dugan, Fair Hearing Specialist, represented the Regional Center of the East Bay, the service agency.

The record closed and the matter was submitted for decision on February 26, 2021.

ISSUES

Did the Regional Center of the East Bay (RCEB) improperly deny claimant's request for funding: (1) temporary housing in a motel, (2) replacement of flooring in claimant's apartment, and (3) furniture and other household items?

FACTUAL FINDINGS

Introduction

1. Claimant is a 56-year-old woman who was recently diagnosed with autism and became a consumer of regional center services in late December 2018. Claimant's difficulties due to her autism include sensory sensitivities to loud noises and vibrations, and difficulties with social skills, including reading social cues. Claimant lives independently in an apartment in Berkeley, but she contends that her apartment is not habitable, as is discussed below.

2. RCEB issued a letter and notice of proposed action on December 10, 2020, denying claimant's request for funding a motel, replacement of flooring in her apartment, and furniture and household items.

3. Claimant submitted a fair hearing request on January 8, 2021.

4. An informal meeting was held with claimant and Sheila White, a case manager supervisor who was not involved with claimant's case previously. In a letter dated January 22, 2021, RCEB again denied claimant's requests. This hearing followed.

Background Information About Claimant's Access to Housing

5. Claimant moved back to Berkeley in December 2016, after a number of years living outside the Bay Area. Since that time, she has had many different housing situations. Claimant has found it difficult to obtain affordable, stable, safe housing that meets her needs and does not cause problems due to noise or other sensory issues.

6. It is very important to claimant that she remain in Berkeley, which is her community. Claimant's spiritual teacher, medical providers, acupuncturist, and therapist are located in Berkeley, and they are her support system. Claimant is estranged from her family members, who do not live in the Bay Area.

7. Claimant has been seeking support from RCEB in accessing housing since January 2019.

8. In March 2019, RCEB referred claimant to Sentry Living Solutions, a provider of ILS (Independent Living Skills) services, to assist her with finding stable housing and other issues. Claimant did not have a good experience with Sentry; their relationship terminated at the end of May 2019.

9. Claimant had been a lodger in a room in a house in the Rockridge neighborhood of Oakland, near the border with Berkeley. In June 2019, claimant was informed she had to vacate that lodging by the end of July 2019.

10. RCEB referred claimant to two or three housing placements in East Oakland, but she did not feel safe in those neighborhoods.

11. RCEB located housing for claimant in Clausen House, a board and care facility in the Lake Merritt neighborhood of Oakland. Claimant moved in on July 31, 2019, however, she did not find that Clausen House was a good housing placement for

her. Claimant was assigned to a shared room with a resident that claimant described as much lower-functioning than her, which caused difficulties. Claimant also had problems with the facility accommodating her vegetarianism, and complaints about the facility's cleanliness and noise. After a confrontation with her roommate and staff in late August 2019, claimant left Clausen House and began living in her car.

12. Being homeless and living in her car was very stressful for claimant.

13. In September 2019, Annie Kim, director of the Family Education and Resource Center (a program of the Mental Health Association of Alameda County), found claimant a safe place to park and sleep in her car at night, in the parking lot of a church in Berkeley. Claimant slept in her car in the church parking lot for months.

14. Claimant was referred to East Bay Innovations (EBI) by another local agency in late January 2020.

15. EBI helped claimant locate a Section 8 housing voucher and an apartment in Berkeley in March 2020. EBI told claimant the apartment would not be available until March 15, and in the interim, EBI placed claimant in a room in a house in North Berkeley. Claimant found that this house had mold and a broken sewer pipe. There were additional delays in moving in to her apartment. Claimant felt that EBI had not been straightforward with her.

16. Home Stretch Housing Assistance Fund is managed by Alameda County, and offers funds for items such as rental assistance, move-in costs, and medical and disability accommodations to housing. Claimant has tried multiple times to access this resource. Home Stretch requires that a case manager or service provider complete the application, rather than allowing individuals to apply directly.

17. EBI told claimant they would help her with a Home Stretch application.

Issues With Claimant's Apartment and Her Attempts to Find Help

18. On March 17, 2020, claimant conducted an inspection of the apartment in Berkeley, and completed a Berkeley Housing Authority checklist. Neither the landlord nor apartment manager were present; another tenant accompanied claimant.

19. Claimant identified a number of problems with the apartment, including cleanliness concerns and needed repairs. When claimant inspected the apartment, the prior tenant's motorized bicycle was sitting on the carpet. Claimant believes that gasoline fumes have permeated the carpet and/or walls. After a period of time in the apartment, she began to feel nauseated. Claimant was concerned about problems with the apartment and about noisy neighbors, but she wanted to vacate her temporary lodging and live in her own home during the COVID-19 pandemic. She also planned to apply for Home Stretch funds for soundproofing and furniture. EBI arranged for the carpet to be professionally cleaned and for housecleaners to clean the apartment.

20. Claimant moved into the apartment on March 28, 2020. She found that the carpet was still very stained and the apartment was dirty, despite the cleaning.

21. In claimant's interactions with EBI, she felt that EBI staff were lying to her, keeping information from her or providing misinformation, and talking inappropriately to her landlord behind her back. Shortly after she moved in, EBI stopped providing services to claimant due to the pandemic and shelter-in-place restrictions.

22. Claimant has continued to experience problems with fumes in the apartment. Claimant's pulmonologist and primary care doctor have recommended removal of the carpeting, because her asthma and allergic symptoms have worsened.

23. Claimant has experienced ongoing problems with noise in the apartment. Some of the neighbors are very noisy, and claimant would like to add curtains and bookshelves to help with soundproofing. Claimant had problems with a droning or buzzing noise made by her refrigerator, which she unplugged (she also stated the refrigerator did not get properly cold). The refrigerator was replaced in June 2020.

24. In April 2020, claimant began experiencing vibrations through the floor of her apartment, which physically hurt her and aggravate her anxiety. The vibrations in the apartment have been an ongoing problem and are very distressing to claimant. Claimant suspects that her downstairs neighbor uses fans and/or other devices to drown out noise from claimant walking above them. Claimant has been unable to sleep in her apartment due to the vibrations, and in April 2020 she again started sleeping in her car in the church parking lot.

Claimant tried placing the bedposts of her bed on anti-vibration pads, but this did not help. More recently, claimant elevated her bed off the floor by suspending the bed frame from cables attached to the walls. She reports that this helped for a short time, but then she experienced a recurrence of the vibrations, which she feels in her back and knee while in the bed, even though it is not touching the floor. Claimant does not know exactly what is causing the vibrations, but suspects that her downstairs neighbor may be using an infrasonic device.

25. In late February 2021, claimant's landlord issued a written notification to the downstairs tenant that the use of any infrasound, ultrasound, or high-vibration device is not permitted in the apartment building.

26. Claimant's medical care providers have documented her symptoms throughout the time she has been dealing with the issues in her apartment. Claimant

has also had numerous emergency room visits for breathing problems, anxiety, and panic attacks related to her experiencing fumes and vibrations in the apartment.

27. Claimant seeks assistance applying to Home Stretch to pay for items to make her apartment habitable to her. This includes removal of the carpeting and installation of new flooring with a neoprene underlayer for sound-proofing and vibration-proofing. Claimant also seeks funding for items such as area rugs and furniture to help with noise-dampening, and household items such as an air cleaner and HEPA vacuum.

28. Claimant submitted a complaint to Alameda County Care Connect about the problems with her apartment, her experience with EBI, and her inability to access Home Stretch. On April 27, 2020, Dr. Robert Ratner responded to claimant's grievance. Among other things, he stated that because claimant was no longer working with EBI, that organization could not help her apply for Home Stretch funding. He noted that RCEB staff could help claimant apply for Home Stretch funding, if she chose to work with them. Dr. Ratner also addressed claimant's request for an alternative service provider. He stated that Care Connect could only help claimant enroll in a care management program if she was disenrolled from RCEB, because the Care Connect program regulations do not allow for enrollment in two similar service programs.

29. Claimant requested to inactivate her case with RCEB in early May 2020. Claimant was disenrolled from RCEB services from May to October 2020.

30. In July 2020, claimant's landlord agreed that modifications could be made to the apartment to replace the flooring and install underflooring, to be paid for by Home Stretch.

31. Claimant had a good relationship with Tirzah Riley, a staff person at LifeLong Medical Care, and thought she would be able to work with Riley to apply for Home Stretch funds. However, this did not prove to be the case.

32. Claimant sought assistance from Alameda Alliance for Health and the Medi-Cal Health Homes Program. Claimant's primary care doctor requested funding for replacement flooring and an air purifier for claimant's autism and allergic symptoms. This funding request was denied as not covered by Medi-Cal. Claimant participated in a hearing on July 14, 2020 regarding this denial, but received no relief.

33. In fall 2020, claimant re-activated her case with RCEB. Claimant asked her former case manager for help applying to Home Stretch, but an application was not completed. Claimant began working with Dan Seda, the case manager supervisor. However, claimant was frustrated because her attention was split between pursuing the Home Stretch application and obtaining a new IPP (Individual Program Plan). Claimant felt that RCEB did not understand the urgency of resolving problems with her apartment.

34. Claimant requested funding from RCEB for temporary housing in a motel, replacement flooring, and furniture (if no generic resource was available). She also sought assistance applying to Home Stretch.

35. In mid-December 2020, the church where claimant had been parking informed claimant that she could no longer park there overnight, due to COVID-19, construction, and other liability concerns. Claimant was able to get permission from a nearby neighbor to use a parking space for a couple of weeks, and since then has been parking on streets near the church.

RCEB's Denial of Claimant's Funding Requests

36. RCEB staff members Christine Hanson (Associate Director of Adult Services) and Dan Seda (case manager supervisor) testified at hearing regarding claimant's case and the regional center's policies, procedures, and services.

37. RCEB is the payor of last resort, and is not permitted by law to fund services and supports if there are generic resources available to fund the items. RCEB also must comply with policies for purchase of services that are established by the regional center's board of directors. RCEB determined that generic resources may be available to meet claimant's needs, and that the items were not necessarily related to claimant's developmental disability.

38. Claimant has an apartment and is paying rent, so RCEB denied a request to fund temporary housing in a motel. RCEB is not vendored with motels. For RCEB consumers that have housing needs, RCEB works to help them find housing.

39. RCEB denied funding for the flooring replacement because generic resources may be available for this purpose. In addition, RCEB's purchase of service policy about assistive technology prohibits RCEB from funding permanent alterations to a consumer's home. Anything installed in the home must be removable.

40. RCEB denied funding for furniture because all regional center services have to be specifically related to of the consumer's developmental disability. Everybody in the community needs furniture and household items such as vacuums and curtains, regardless of whether they have a developmental disability.

41. On December 10, 2020, RCEB issued a letter and notice of proposed action, denying claimant's request for funding a motel, flooring replacement, and furniture.

42. Although RCEB denied claimant's funding requests, RCEB wants to establish a good working relationship with claimant, and has offered other ways to assist claimant in resolving the problems with her apartment.

43. RCEB is willing to assist claimant in applying for Home Stretch funding, a generic resource. Seda attempted to begin this process with claimant in December 2020, but the application was not completed. It appears this was partially due to the need for claimant to sign an updated release of information form, and partially due to the breakdown in the relationship between claimant and Seda.

44. RCEB offered claimant a referral to the Helping Hands fund, which is a program administered by RCEB. Helping Hands can grant or loan money to RCEB consumers, with loans to be repaid from the consumer's SSP (State Supplementary Payment) benefits. Because the Helping Hands program is funded by private donations, not the state, the funding does not have to meet the requirements of state law or RCEB purchase of service policies, and thus the program could be used for the needs identified by claimant. Claimant did not want a loan through Helping Hands, due to her concern over how long it would take to repay using her SSP benefits.

45. RCEB recommended funding ILS services to assist claimant with her living situation by exploring solutions to problems with the apartment, and with talking to the landlord or other tenants. RCEB also offered to assist claimant in talking with her landlord; claimant declined.

Claimant's Additional Evidence

46. Claimant is very concerned about avoiding a return to homelessness. Despite the problems with her apartment, claimant would like to keep it, if she can get the flooring replaced and resolve issues with her neighbor. The apartment is in a safe neighborhood and is affordable to claimant with the Section 8 voucher, which is important because claimant is unemployed and relies on her SSI benefits. Claimant was previously employed at a coffee shop, but lost her job in November 2019.

47. It is very important to claimant that her case workers and service providers are transparent and provide her all the information about her case, so that she can make her own informed decisions, and preserve her self-agency. Claimant has had multiple bad experiences in which she felt that service providers were keeping her in the dark or gaslighting her, or inappropriately communicating with others about her without her involvement. After her experiences with EBI, claimant does not want RCEB staff or other people talking to her landlord without her.

48. Claimant has PTSD (post-traumatic stress disorder) and generalized anxiety disorder in addition to her diagnosis of autism spectrum disorder. She wants to find a psychiatrist in Berkeley that treats autism and trauma symptoms through diet.

49. Claimant has concerns regarding whether RCEB staff have received training on trauma-informed care, and on the particular challenges faced by regional center consumers with late-diagnosed autism and housing instability or homelessness.

50. Claimant has been frustrated with the IPP planning process, which she does not feel has been adequately explained to her. She has not felt that her IPPs adequately reflect her specific needs and goals.

51. As of late February 2021, claimant was working with RCEB on an addendum to her IPP that would include services from the Housing Consortium of the East Bay (HCEB) for housing access/support. HCEB has recently begun serving regional center clients in Alameda County, having formerly only served Contra Costa County.

52. Claimant is now being assisted by Benjamin Chen from the Alameda County Developmental Disabilities Planning/Advisory Council. Chen wrote a letter dated February 22, 2021, confirming that he is supporting claimant in applying for Home Stretch funds. Chen has also been working with claimant, RCEB, and Housing Consortium of the East Bay to connect claimant to housing access services.

53. Claimant explained that she originally requested funding for temporary housing from RCEB, and requested a denial so that she could appeal. She was advised to also ask RCEB to fund the flooring while RCEB pursued generic resources through Home Stretch, and to ask for a denial on this issue. Claimant was not intending to ask RCEB to fund furniture, because she planned to seek this from Home Stretch, but because RCEB is the payor of last resort, she also included furniture in her request.

LEGAL CONCLUSIONS

1. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Developmental Disabilities Services Act (Lanterman Act, found at Welfare and Institutions Code¹ section 4500 et seq.). The Lanterman Act provides that an “array of services and supports should be established

¹ All statutory references are to the Welfare and Institutions Code.

... to meet the needs and choices of each person with developmental disabilities ... and to support their integration into the mainstream life of the community.” (§ 4501.) The purpose of the Lanterman Act is to prevent or minimize the institutionalization of persons with developmental disabilities and their dislocation from family and community; and to enable persons with developmental disabilities to approximate the pattern of everyday living of nondisabled persons of the same age and lead more independent and productive lives. (§§ 4501, 4685; *Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388 [the term “intellectual disability” has now replaced the formerly used term “mental retardation”].)

2. The Department of Developmental Services (Department) is the state agency charged with implementing the Lanterman Act. It contracts with regional centers that are responsible for providing persons who have developmental disabilities with access to services and supports best suited for them. (§ 4620, subd. (a).)

3. To determine how a consumer is to be served, a regional center conducts a planning process that results in development of an IPP. (§ 4646.) The IPP is developed by an interdisciplinary team with participation by the consumer and/or the consumer’s representative. The IPP must state the consumer’s goals and objectives, and state the services and supports that will be purchased by the regional center or obtained from generic resources. (§§ 4646, 4646.5 & 4648.)

4. While regional centers have a duty to provide a wide array of services to consumers, they are also directed by the Legislature to provide the services in a manner that reflects the cost-effective use of public resources. (§§ 4646, subd. (a), 4640.7, subd. (b).) Accordingly, regional centers may not fund duplicate services that are available through another public agency that has a legal responsibility to serve the general public. This prohibition against “supplanting generic resources” is contained in

section 4648, subdivision (a)(8). Regional centers must identify and pursue all possible sources of funding for services, including generic services (§ 4646.4, subd. (a)(2)), governmental entities or programs that are required to pay the cost of providing services (§ 4659, subd. (a)(1)), and private entities that may be liable for the cost of services to the consumer (§ 4659, subd. (a)(2)). Each regional center is also required to comply with the purchase of service policies established for the regional center and approved by the Department. (§ 4646.4, subd. (a).)

5. Given that generic resources to assist claimant in resolving the problems with her apartment have not yet been exhausted, it has not been established that RCEB erred in denying claimant's request for funding for a motel, replacement flooring, and furniture and household items.

ORDER

Claimant's appeal is denied.

DATE:

HOLLY M. BALDWIN

Administrative Law Judge

Office of Administrative Hearings

NOTICE

This is the final administrative decision; both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days. (Welf. & Inst. Code, § 4712.5, subd. (a).)